IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 22.02.2005

CORAM:

THE HONOURABLE MR.JUSTICE P. SATHASIVAM
AND
THE HONOURABLE MR.JUSTICE S.K. KRISHNAN

WRIT PETITION NO.34347 of 2002

R. Chandrasekaran .. Petitioner

Vs.

1. The Director of
Employment & Training
Chepauk
Chennai 600 005.

2. The Registrar
Tamil Nadu Administrative Tribunal
City Civil Court Campus
High Court Buildings
Chennai 600 104. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in O.A.No.510/2001 dated 28.11.2001 and quash the same and consequently appoint the petitioner as Junior Training officer, (Mechinist) in any one of the available vacancies at Erode pursuant to the order of selection made by the 1st respondent in R.C.TP2/65230/2000 dated 23.12.2000.

For petitioner : Mr.K. Raja for
Mrs.Muthumani Doraisamy
For respondent-1 : Mr.E. Sampath Kumar, G.A.

WEB COPY

O R D E R

(Order of the Court was delivered by P.SATHASIVAM, J.)

Writ Petition is directed against the order of the Tamil Nadu Administrative Tribunal dated 28.11.2001 made in O.A.No.510 of 2001 in and by which the tribunal dismissed the original application filed by the petitioner herein. The brief facts which are required for the disposal of the above writ petition alone are stated hereunder:-

https://hcservices.ecourts.gov.in/hcservices/

According to the petitioner, he belongs to the Backward Class community and he completed SSLC in the year 1982 and also passed Higher Secondary Course. He passed the course of Machinist in the Government Industrial Training Institute, Erode and to that effect, Nationalised Trade Certificate was issued in the year 1986. He also completed the Vocational Training held in October 1987 and to that effect, National Apprenticeship Certificate was issued in the year 1987. Immediately, he enrolled his name in the Employment Exchange, Erode in the year 1986. He gained experience as Machinist in the Department of Mechanical Engineering in Kongu Engineering College, Perundurai from 7.8.1989 and thus, became qualified to be appointed as Junior Training Officer (Machinist). Since he was having the requisite qualification, he was provisionally selected for the post of Junior Training Officer (Machinist). After his selection, the first respondent directed him to produce all the documents on 5.1.2001, which were produced for verification before the Committee on 5.1.2001. The first respondent, instead of issuing the formal order confirming the earlier selection, on extraneous consideration, had taken steps to appoint another person since his date of birth was 15.2.1966 and he had completed the age of 35 years on 14.02.2001. According to the petitioner, this was in view of the fact that the petitioner was getting age-barred very soon, though his name was sponsored by the Employment Exchange and he was provisionally selected. But, apart from the petitioner, the other persons were of lesser age having lesser experience and they were having more opportunities, whereas for the petitioner, this was the last chance. The action of the first respondent is contrary to the Government Order in G.O. Ms. No.191, Rural Development Department dated 7.9.1998 and having no other remedy, the petitioner approached the Tribunal by filing O.A. No.510 of 2001. The Tribunal, without considering his claim with reference to the above referred Government Order, has erroneously rejected his application. Hence the present writ petition.

2. Heard the learned counsel for the petitioner as well as learned government advocate for the first respondent.

3. After taking us through the various selection process, the Government Orders and the order of the Tribunal, learned counsel for the petitioner would submit that the second respondent has committed an error in not considering the case of the petitioner in the light of G.O. Ms. No.191, Rural Development Department dated 7.9.1998. He further contended that the petitioner herein neither suppressed any material fact nor misled the authorities. Inasmuch as the District Employment Officer, Erode did not say that the petitioner committed a mistake, while sponsoring his name, the order of the first respondent cancelling his initial appointment cannot be sustained, but the same was not considered by the second respondent.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4. On the other hand, the learned government advocate appearing for the first respondent would submit that in the light of the fact that as per the registration, the petitioner is junior to others, who registered prior to his registration, and the first respondent is fully justified in cancelling his appointment and the same was rightly considered and rejected by the Tribunal.

5. We have considered the relevant materials and the rival contentions.

6. The only point for consideration in this writ petition is whether the first respondent is justified in cancelling the initial appointment of the petitioner and whether the order of the second respondent Tribunal dismissing his original application is sustainable in law.

7. It is not in dispute that the petitioner has passed the course of Machinist in the Government Industrial Training Institute at Erode and he was awarded with Nationalised Trade Certificate in 1986. Subsequently, he completed the Vocational Training held in October 1987 and awarded with National Apprenticeship Certificate in the year 1987. It is his claim that he gained more than 11 years experience as Machinist in the Department of Mechanical Engineering in Kongu Engineering College, Perundurai from 7.8.1989. He registered his name with the Employment Exchange, Erode in the year 1986 with the Nationalised Trade Certificate. It is further seen that the petitioner was provisionally selected by the first respondent and was directed to produce all original documents on 5.1.2001. Accordingly, he appeared and produced all the certificates on 5.1.2001. However, he has not been favoured with the posting order as he would be completing 35 years of age as on 14.2.2001, though his name was sponsored by the Employment Exchange and provisionally selected. The grievance of the petitioner is that the first respondent has committed an error in not considering G.O. Ms. No.191 dated 7.9.1998.

8. A perusal of the order of the Tribunal shows that placing reliance on the information furnished by the first respondent in the form of a reply affidavit, after holding that the registration of the petitioner in the Office of the Employment Exchange is subsequent to other qualified persons, the Tribunal dismissed his application and rejected his claim.

9. In this regard, it is relevant to refer to G.O. Ms. No.191 Rural Development Department dated 7.9.1998. Among the other clauses, Clause 3 is relevant, which reads as under :-

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

"வேலை வாய்ப்பகத்திலிருந்து பெறப்படும் பட்டியலில் கண்டுள்ள பெயர்களில் மேலே (1)ல் உள்ள விதிமுறைப்படி பதிவு மூப்ப அடிப்படையில்தான் நியமங்கள் செய்யப்படவேண்டும். ஒரு வேளை பட்டியல்களில் உள்ள பெயர்களில் எவரேனும் தகுதியுள்ளவர்களாக இருந்து நியமனக் குழு கூடும் நாளிலிருந்து ஆறு மாத காலத்திற்குள் நியமனம் செய்வதற்கான அதிக பட்ச வயதை அடைவதாக இருந்தால் அவர்களின் பெயர்களுக்கு முன்னுரிமை அளித்து தேர்ந்தெடுக்கலாம்."

It is relevant to note that as per the assertion made by the petitioner, he was about to complete the age of 35 years as on 14.2.2001. In such circumstances, as per the above referred Government Order, the petitioner is entitled to be given preference for appointment to the post of Junior Training Officer (Machinist). Though he was provisionally selected, as rightly pointed out by the learned counsel for the petitioner, the first respondent committed an error in not confirming the provisional order without considering the government order referred to above, particularly taking note of the fact that after completion of the age of 35 years, he cannot compete for the said post. We are satisfied that both the first respondent as well as the second respondent Tribunal failed to comply with G.O. Ms. No.191 Rural Development Department dated 7.9.1998. On this ground, the order of the second respondent made in O.A. No.510 of 2001 dated 28.11.2001 has to be quashed.

10. Learned counsel for the petitioner has brought to our notice that even at the time of ordering Rule Nisi in the writ petition on 5.9.2002, in W.P.M.P. No.51286 of 2002, this Court directed the government to keep one post vacant. In the light of the said direction, we are satisfied that the petitioner is entitled to the consequential relief of a mandamus.

11. Accordingly, while quashing the order of the second respondent dated 28.11.2001 made in O.A.No.510 of 2001, a direction is issued to the first respondent to consider the claim of the petitioner herein as Junior Training Officer (Machinist) in any one of the available vacancies at Erode, pursuant to the order of selection made in RC.TP2/65230/2000 dated 23.12.2000, within a period of four weeks from the date of receipt of a copy of this order.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

12. The writ petition is allowed to the extent indicated above. No costs.

gs

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Director of
   Employment & Training
   Chepauk
   Chennai 600 005.

2. The Registrar
   Tamil Nadu Administrative Tribunal
   City Civil Court Campus
   High Court Buildings
   Chennai 600 104.

+ 1 cc to Mrs.Muthumani Doraisamy, Advocate SR No.8167

+ 1 cc to The Government Pleader, high Court Madras SR No.8211

KC(CO)
SR/28.2.2005

W.P.NO.34347 of 2002

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/